QUEENSLAND PAROLE SYSTEM REVIEW

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SUBMISSION

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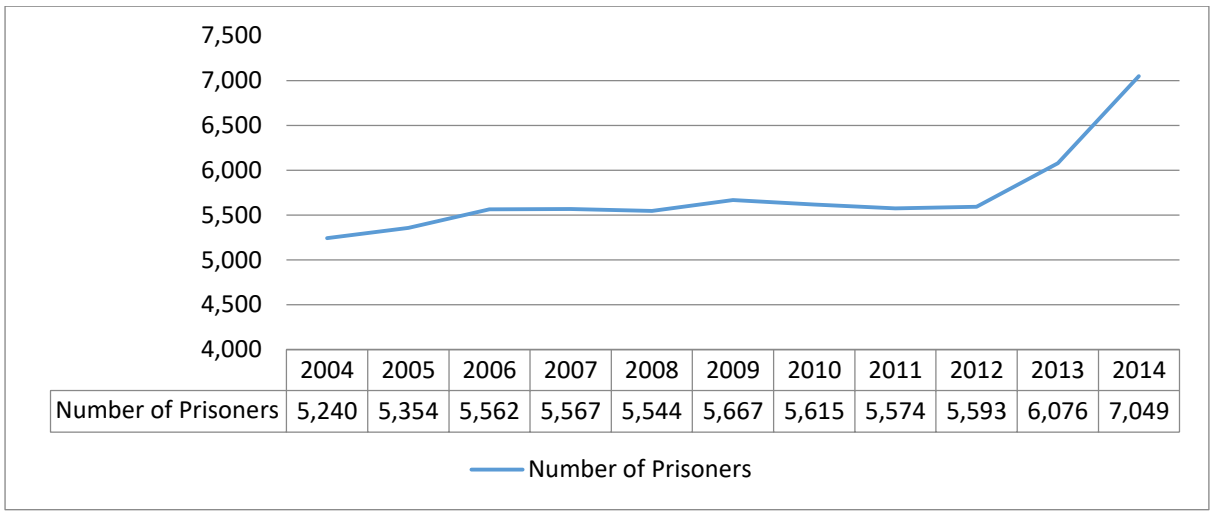
This submission does not seek to address all the issues and discussion points raised in the Issues Paper as the authors are not equipped with the requisite knowledge and expertise to provide informed responses to each and every one of them.

Background

The number of prisoners in Queensland remained fairly stable in Qld until a rapid rise in 2012 (from 5574 to 7049 in 2014) (see Table 1). It costs around $100,000 per year to house a prisoner, and around $ 1 million to build an additional prison cell. Increases in the prison population carry a considerable additional cost to the Qld tax payer. Of the prison population in 2014 24% (1,676 of 7049) were remanded in custody, that is they were unsentenced. Of these some will be acquitted and never convicted and so should never have been in the prison system. Diverting these prisoners from custody will save considerable costs.

Table 1: Prisoners, Queensland, 2004-2014



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of Prisoners	5,240	5,354	5,562	5,567	5,544	5,667	5,615	5,574	5,593	6,076	7,049

Source: Australian Bureau of Statistics, *Prisoners in Australia*, 2014, Canberra.

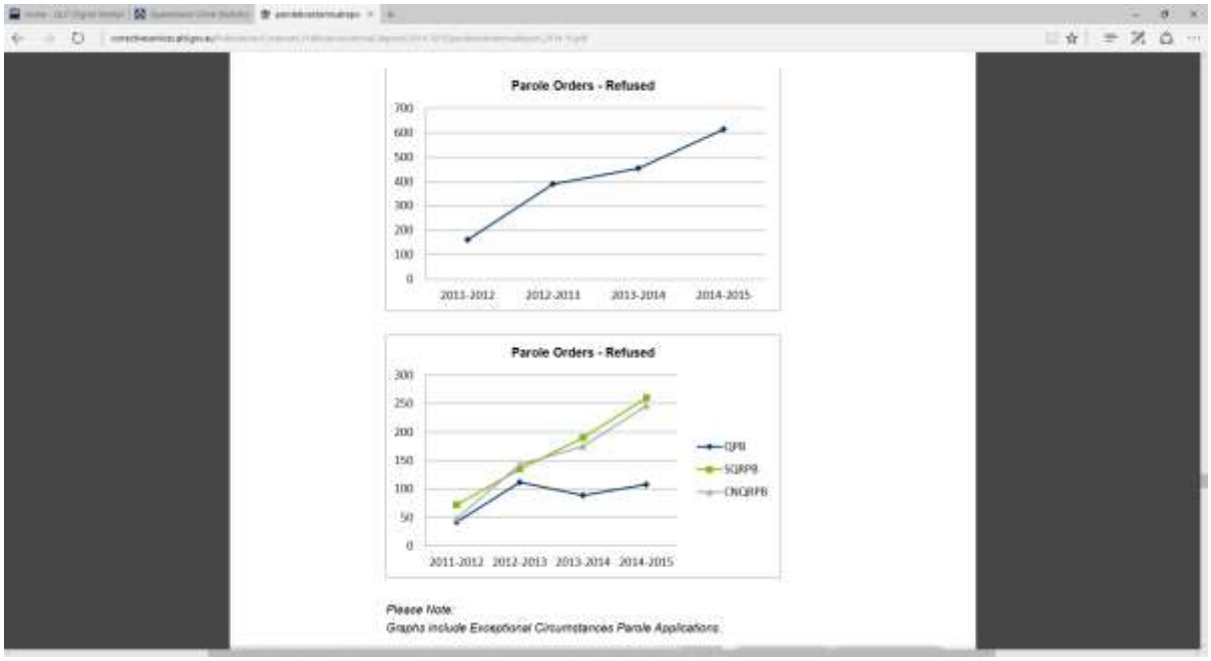
Since 2011, there has been a significant increase in the number of prisoners refused parole, and larger numbers whose parole has been suspended, leading to a return to prison (Table 2).

Table 2 Parole Refused and Suspended, Qld

	Refused	Suspended
2015	614	1252
2014	454	1259
2013	390	1231
2012	162	3548
2011	256	594

Source: Qld Corrective Services, Annual Reports, *Queensland Parole Boards, 2011*-2014

Figure 1: Screen Shot Qld Corrective Services, Annual Reports, *Queensland Parole Boards,2015*



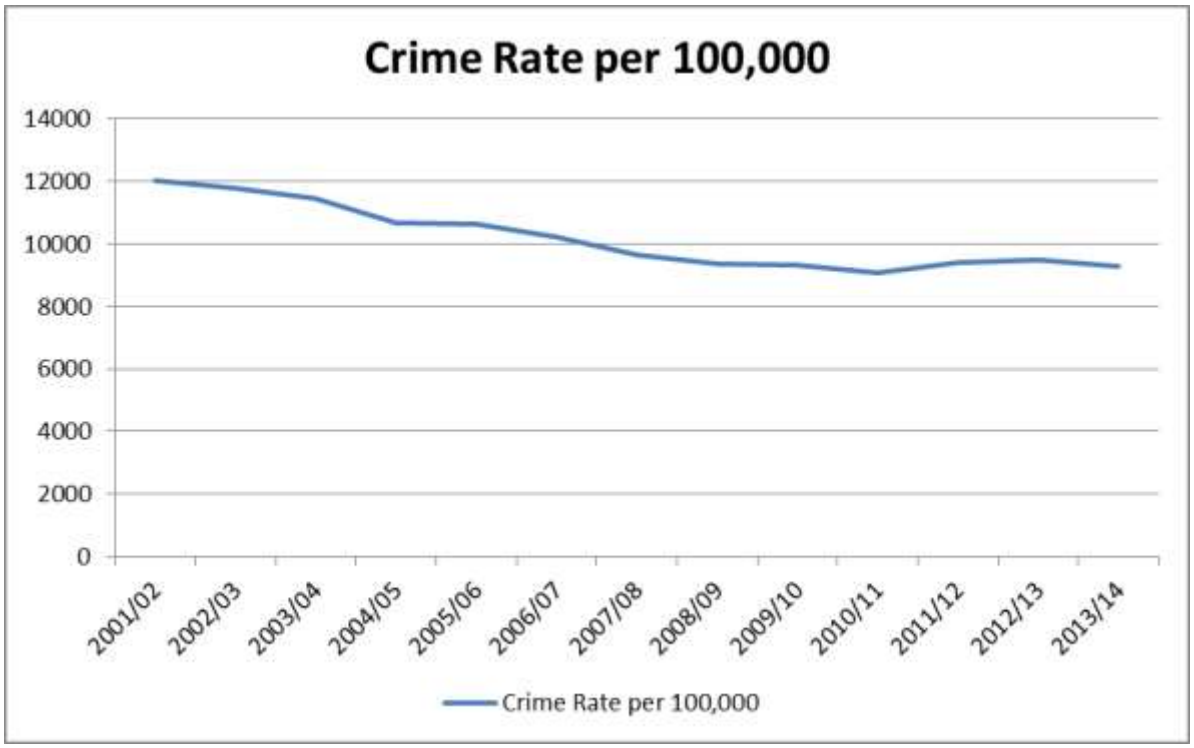
Source: Qld Corrective Services, Annual Reports, *Queensland Parole Boards,2015,* Page 15

There are multiple reasons underscoring the increase in the prison population.

- More offenders sentenced to jail – predominantly for short periods
- Fewer offenders returned to the community by parole boards
- More parole suspensions
- Fluctuations in remand populations
- Possible delays in court hearings and sentencing

The rise in the prison population coincides with a steady decline in the number of recorded offences (Figure 2). Hence there is no substance to any claim that increasing crime is behind the increasing prison population. There is evidence to suggest that decisions of the parole board and the parole system are contributing to higher imprisonment rates at a time of decreasing crime rates. This is dysfunctional and costing Qld tax-payers millions of dollars that could otherwise be spent on education, roads or health systems.

Figure 2: Crime Rates per 100,000, Queensland 2002-2014



Source, Recorded Crime Statistics Queensland 2001-2014

Measures to Reduce the Prison Population
Unnecessary imprisonment is costly, harmful and criminogenic. Measures that can be taken to reduce imprisonment include:

- Divert minor offenders who are no risk to the community from custody
- Cease imprisoning 17 year olds in adult jails (a bill before Parliament is proposing this)
- Provide bail support to reduce remand populations and more community support programs to reduce the number breaching bail conditions and entering or re-entering prison.
- Evaluate, monitor and adequately support community correction and bail programs
- Invest in innovative new justice measures, such as trialling circles of support (COSA)
- Enhance the access to community corrections in rural and regional areas – to reduce unnecessary incarceration
- Provide enhanced support for prisoners with complex needs – such as mental health, drug and alcohol problems – not only during imprisonment but during periods of parole.

Part 1 Parole Board Operations

As outsiders to a system that substantially operates behind closed doors, we are limited in what we can, with definitiveness, say concerning the operations of the Board.

1. In addition to possessing a legal qualification and relevant legal experience (as a judge, magistrate or in some other capacity), essential qualifications for the President should include: an extensive knowledge of the workings of the criminal justice system at all levels; command of relevant research and literature relating to contemporary corrections

and the administration of criminal justice more generally; and administrative capacity and experience relevant to the management of the sizeable cohort of part-time members and the requisite personal skills to engage them in the decision-making of the Board in ways that ensure the most effective use is made of their diverse skills and experiences.

2. There should continue to be some level of decentralisation in the system, to ensure the input of local knowledge. There is an argument for more decentralisation given the size and regionalisation of Queensland.

3. Given the level of Indigenous contact with the criminal justice (15 times over-represented ABS, 2014) and the particular issues to which that gives rise it is recommended that the current composition be altered to include at least four rather than just one member drawn from Aboriginal and Torres Strait Islander communities. Housing, employment, mental health and drug and alcohol services are critical to offenders returning to the community and thus to the effectiveness of the parole system. It is desirable that knowledgeable and experienced representatives from the NGO/community welfare sector therefore be included on the Board. Consideration should also be given to including academics with relevant expertise in the criminal justice field.

4. Removal of members without reason threatens the independence of the Board and should no longer be permitted.

5-9. Given the existing workload of the Boards and thus the burden this imposes on members if they are to be fully prepared the failure to remunerate them for reading time is likely to be a serious impediment to effective decision-making. But this is not merely a question of providing financial incentives, but of ensuring that caseloads, decision-making processes and other conditions afford the time in preparation and deliberation for justice to be done in each case. Deliberation on 60 parole applications at a single sitting (or over 80 in the case of regional sittings) raises serious questions about how well the Boards could be performing their function. But more information is needed to properly inform recommendations in relation to other discussion points raised by the caseloads and listed in this part. Most obviously it is important to know why the current caseload is so large and why it has increased more than three-fold in the space of 6 years? Could it be associated with the significant increase in suspensions of parole? If so, why is this occurring? With these workloads what time is afforded members to properly participate in deliberations, even regardless of how well prepared they might be or seek to be? How, practically speaking, do the Boards get through such caseloads? In light of answers to such questions, might other reforms reduce the caseload and thus resolve some of the issues raised in the discussion points? It might reasonably be speculated that the excessive caseloads work against all members participating in the rounded assessment of applications, creating the danger that expedience will rule whereby, for example, DCS recommendations simply get rubber-stamped or undue reliance is placed on tools like actuarial risk assessments because they come with the appearance of objectivity and are quick and simple to apply. This may see risk management give way to mere risk aversion. These concerns have also to be considered

alongside what is arguably the excessive supervision loads of probation and parole officers (see under Part 4).

Part 2 Transparency of parole decision-making

10. Insofar as ministerial guidelines are binding on the boards or treated as binding, it is desirable that they appear in legislation, having been a matter of parliamentary scrutiny and debate.

11. See later discussion of serious violent offenders. Obviously, these can be particularly sensitive and politically and media charged cases. There is no reason, however, why these cases should not be managed like other cases, so long as the Board is properly resourced and organized to fulfil its functions.

13. The assessments sought and relied upon by the Board should depend upon the particular case under consideration and what is required to make an informed decision in that case.

14. There is an obvious public interest in parole board decisions, but on balance hearings should not be open to the public. The likely effect of public hearings would be to inhibit full and open deliberation by members and possibly subject the Board to unfair often media-driven pressure, particularly in sensitive cases.

15. Victims who are on the Victims' Register obviously have an interest in the parole decision and should be able to make representations to the Board relating to the impact that releasing the offender will have on them. The Board however should not become a forum in which attempts are made to simply prolong the incarceration of an offender on punitive or retributive grounds – in effect re-running the sentencing process. Victims should be invited to speak to any material risk to themselves stemming from past relationships and history as between themselves and the offender. Victims should not however be members of the board as this would hamper and politicise decision-making.

Part 3 Accountability mechanisms for the Parole Board

16-19. Reasons for a decision of the Board should be provided to the prisoner as a matter of fairness and so, in the case of a refusal, to permit him or her to better work towards securing release on parole in the future. Judicial review should be available to any affected party, but otherwise resources would be better directed at strengthening existing processes rather than establishing additional review mechanisms.

20-21. It is highly desirable that there be some independent oversight of the workings of parole and the parole boards, especially as parole hearings are not, and should not (for reasons noted above) be, open to the public. We have no strong view as to whether oversight should be conducted by an independent inspectorate or by the existing Chief Inspector. The advantage of the latter is that the oversight could inform more 'joined up' responses to problems and issues in the system. The workings of different parts of the correctional system (and of the criminal justice system more generally) are closely interconnected. Changes in

one part often have unintended consequences in others. For example the increased parole refusals and suspensions since 2012 have increased the prison population at great cost to the Qld tax payer.

22. Without in-depth knowledge, it appears that current training for members of the Board is at best rudimentary. A more comprehensive education programme, including continuing education, is strongly recommended. This should include critical input from outside 'the system' including with respect to the state of knowledge and research in relation to contemporary penal practice and philosophy.

23. Annual reporting should not only relate to 'system fails' – where a parolee commits a serious crime – but should be comprehensive. It should include detailed information in relation to the following at the very least: staff/offender ratios, completion rates, revocation/cancellation rates (with detailed breakdown of reasons for parole cancellation), incidence and rates of referral to community agencies (housing, employment, drug and alcohol services, etc).

Part 4 – Factors to increase success on parole

The overriding consideration in the parole system is community safety. If we conceive of that as something that should encompass the welfare of offenders as well as others, the most desirable way of serving that end is to have offenders reintegrate successfully into the community. That is the best long term guarantee of increased community safety. While an understanding of the detailed working of the current parole system in Queensland would benefit from a more extensive programme of empirical research to confirm or otherwise informed speculation based on available data, that speculation suggests a number of factors currently conspire to ensure that the performance of the system is less than optimal.

Relying on the data relating to Queensland Correctional Services from the most recent *Report on Government Services* (Productivity Commission, 2016) in 2014-2015 the average daily population of offenders under supervision in prison or in the community numbered 23,500. Of these, approximately 30% only were in prison. When we look at total recurrent expenditures we find that this 30% of offenders soaked up 90% of the correctional budget, leaving a paltry 10% of the budget to support the supervision of 70% of offenders in the community. There is little wonder therefore that (arguably) unsustainable caseloads and other resource burdens work against the effective operation of the parole system (and other community sanctions). It is highly likely this produces a number of mutually reinforcing adverse effects on the entire correctional system, which adversely affect the performance of the parole system, and result in suspensions of parole that could otherwise have been avoided.

Community sentences like probation are likely to have less credibility with the courts (and the media and wider community), which inclines the courts to a greater reliance on imprisonment. It can reasonably be expected that credible alternatives to custody should affect the willingness of the courts to sentence offenders to short terms of imprisonment. As noted (p15), the average length of stay in custody is less than 2 months. Presumably this includes remand prisoners as well as sentenced prisoners. The former raises separate issues to do with the bail system which lie outside the terms of reference of this review, but it would

appear to be the case that the annual flow of sentenced prisoners through the system also includes many short-termers. It has to be asked what purposes are served by such short term prison sentences, and what are the opportunity costs? From the standpoint of community safety do the benefits outweigh the likely criminogenic effects that flow from the disruptive impacts on the lives of offenders? At a net recurrent cost per day of almost $300 for each prisoner (compared with less than $15 for an offender supervised in the community) might not more money be better spent on enhancing the effectiveness of alternatives to custody, reducing offender/staff ratios (by far the highest of any jurisdiction in the country at 35:1, compared to the national average of 21:1) and improving the quality of supervision and support. This could reduce the numbers entering prison in the first place and enhance the effectiveness of the parole system for those who are sentenced to terms of imprisonment. It could also reduce the suspensions of parole which have increased significantly since 2012.

It remains to be verified by systematic research but, notwithstanding that under the 'Next Generation Case Management Model' levels of service and intensity of supervision are adjusted according to offender risk, it appears that current huge caseloads are likely to orient officers and the system more to compliance – monitoring for breach of conditions, a focus on static risk factors and risk aversion - than the more resource-intensive and time-consuming tasks of supervision and support needed to successfully reintegrate high needs parolees into the community. This would explain the high rates of parole suspension/cancellation (the doubling since 2010 noted on p16), which in turn contributes to prison overcrowding and cost blow-outs in prison budgets. This would also help explain the increased workloads of the Boards as the increased numbers of prisoners lead to increased numbers of parole applications.

This creates a vicious spiral which dooms the parole system, at almost every level, to sub-optimal performance and perhaps (given the numbers) short term crisis management. Large sums of money are spent on the costly 'churning' of offenders through the system – into, out of and back into prison – to the detriment of services and forms of intervention that we know increase the chances that prisoners returning to the community will desist from offending, like assistance with housing, employment and accessing mental health and drug and alcohol services (Ross, 2005; Baldry, 2005; Borzycki and E Baldry, 2003; J. Petersilia; 2000; Hagan & R. Dinovitzer, 1999). The reality at the end of the day is that all but a few offenders sentenced to prison will be released into the community at some point. The safety of the community is best served if the carceral-offending cycle can be interrupted at the earliest possible opportunity for the greatest number of offenders.

24. In light of the above, there is no doubt that the ratio of offenders to staff should be substantially reduced. The Australian average (21:1) should not be used as a benchmark because it is too high. Only two other states exceed the national average and that average is so high because Queensland is such an outlier. Most jurisdictions range between 12:1 and 16:1, so the aim should be below the national average.

25. The roles of probation and parole officers should embody an appropriate balance between the various functions of assessment, case management, supervision/surveillance and compliance. The danger is that new technical instruments (actuarial risk assessments, drug

testing, electronic surveillance, etc) may unduly weight roles in the direction of surveillance, risk management and compliance. Under the pressure of large caseloads and in a public atmosphere where risk aversion holds increasing sway instruments that give the appearance of scientific objectivity and are quick and simple to administer have enormous appeal. It is important therefore to adopt more sophisticated understandings of and approaches to risk, including recognizing the limitations of risk assessment instruments (Cooke and Michie, 2011) and the role of dynamic as against static risk factors and assessments. This points to the importance of more holistic and contextual approaches to the needs and circumstances of offenders. This in turn has implications for the training, skills, capacities and responsibilities of officers charged with the role of supervising and supporting offenders in the community.

26. More resources for the service are necessary and are likely to reduce recidivism, but as suggested above it is equally important to reflect on and seek to implement what are 'best practice' models for probation and parole supervision.

27. Doubtless, the answer to this is an emphatic 'yes', given all that we know of the Indigenous experience and the scale of Indigenous contact with the criminal justice system. But a detailed response is best left to those from the relevant communities which are diverse amongst themselves. One issue, already noted, is appropriate representation on the Parole Boards. Another is how well these communities are represented amongst probation and parole officers. A further one is the extent and nature of liaison and referral as between the probation and parole service and Aboriginal and Torres Strait Islander organisations and services to support reintegration of Indigenous offenders back into their communities.

28-30. As already noted, excessive caseloads work against effective supervision practices but equally attention must be given to the nature and quality of those practices and the extent to which they appropriately balance goals of surveillance and compliance with the integration of offenders. For all that apparently sophisticated actuarial risk assessment tools are utilized in the management of offenders, it appears that undue weight is still placed on offence categories (notably sex offenders and serious violent offenders) in the assessment and management of risk (see table on p18 which suggests that there is a blanket exclusion of these offenders from low and standard risk categories). This is not consistent with the research evidence relating to violent offenders or sex offenders, neither of whom are as a group more inclined to recidivism than other offenders (Wan and Weatherburn, 2016; Gelb, 2007: 21-31; Richards, 2011a).

31. How breaches of parole are to be viewed and responded to should depend upon the particular circumstances and the gravity of the contravention. This must of necessity leave considerable discretion in the hands of individual officers and the service, but this also underscores the importance of achieving a balance between the different functions of compliance and integration.

32. GPS tracking should not be a general requirement for parolees. This is unnecessary, would constitute a waste of resources and in many cases could militate against successful rehabilitation. There may be some cases in which it is warranted but that should depend upon a careful assessment of the circumstances of the individual offender.

33-43. We are not in a position to respond to these discussion points in detail. As is now widely documented mental health (and general health) and substance abuse problems and needs are widespread within the prison population. They are also critical factors influencing repeat offending. Whatever the adequacy of services and programmes offered in prison (and prisoner numbers and overcrowding must put pressure on effectively meeting needs in these areas), the more general problem, and the one facing parolees and the officers supervising them, is more likely the paucity of mainstream services in the community relative to need which need of course extends well beyond the offender population. Offenders may face particular problems of access, being seen as more difficult, high risk clients and perhaps less deserving. The problems are greater in many regional and remote areas due to the uneven geographical availability of specialist services of this kind. The problems are not confined to Queensland and require all- and whole-of-government coordinated responses. Provision of services that prevent people from becoming entangled in the criminal justice system or divert them from continued involvement in it not only enhance community safety but are a sound investment given the financial cost of churning ever growing numbers through police cells, courts and prisons.

44. The answer to this is 'yes', as it provides the best chance of ensuring that prisoners returning to the community desist from future offending (see Ross, 2005; Borzycki and Baldry, 2003; Petersilia; 2000). In particular, we commend the idea of establishing Circles of Support and Accountability (COSA) which are explained in detail below.

What are Circles of Support and Accountability (COSA)?

Circles of Support and Accountability (COSA) are groups of trained and supported community volunteers who work with sex offenders (usually child sex offenders) who have been recently released from prison, to assist the offender's reintegration into the community, and thereby reduce sexual recidivism (Elliott & Beech 2012; Hannem & Petrunik 2004). As Hannem (2011: 272) explains, after receiving training, and the offender's release from prison, volunteers meet with the offender (known as the 'core member') and create a written agreement (called a 'covenant' or 'contract'), which 'outlines the support and confidentiality that the core member can expect from his circle, and the expectations that the volunteers have of their core member in terms of his behaviour in the community'. Once the contract has been agreed on:

> The circle meets weekly as a group….The volunteers offer assistance with practical life issues, such as learning to cook meals or do laundry, or in dealing with government agencies, such as the police, sex offender registry, or social assistance agents, and they act as a sounding board and problem-solving team for the core member's frustrations and concerns. The core member receives support from his circle and, in turn, is accountable to them for his actions and decisions. Over time, as the core member is successfully reinserted into the community, contact with the circle will become less frequent (Hannem 2011: 272).

COSA have been established for over two decades in Canada (Hannem & Petrunik 2004), over a decade in the United Kingdom (Armstrong et al. 2008; Nellis 2009) and some

American states (Duwe 2012; Fox 2010; Vermont Department of Corrections 2009), and several years in parts of Europe (Hanvey et al. 2011; Höing et al. 2013).

What is the evidence about the efficacy of COSA?

Existing research indicates that, overall, COSA have a positive impact on the reintegration of core members, who have reported social, emotional and personal benefits (Hanvey et al. 2011; McCartan et al. 2014; Thomas et al. 2014; Wilson et al. 2007, 2005). Research has identified that sex offenders who participate in a COSA have lower rates of recidivism (sexual, violent and general) compared with sex offenders who do not participate in a COSA (Wilson et al. 2009; Wilson et al. 2007, 2005). Furthermore, COSA have been found to enhance community safety, as COSA volunteers have been able to report core members to the authorities on occasions when core members engaged in "pro-offending behavior" such as accessing pornography (Bates et al. 2007; Quaker Peace and Social Witness 2005). While this research appears promising, it is important to note that a long-term randomised controlled trial of COSA has not yet been undertaken.

COSA have been found to save criminal justice costs. Although McCartan et al. (2014) estimate the cost of each COSA at £9,000, other researchers argue that if reduced reoffending is taken into account, COSA provide a return on investment. Duwe (2012) estimated that COSA saved US$11,700 per participant, and Elliott and Beech (2012) found that COSA produced cost savings that while modest, rank towards the upper end of cost reductions that can be expected from criminal justice programs.

How can COSA work with the parole system?

While COSA were initially designed to work with sex offenders released from prison at their Warrant Expiry Date (ie having served their entire sentence in prison and being released into the community without parole supervision), they have since been utilised in addition to parole in some locations (see eg Bates et al. 2007; Quaker Peace and Social Witness 2005; Richards 2011). McCartan et al.'s (2014) analysis of COSA case files in the UK found that COSA complemented (rather than duplicated) the statutory supervision of sex offenders by supporting core members' compliance with supervision and treatment programs.

Given the emerging evidence about the efficacy of COSA in reducing recidivism and improving community safety, we urge the Review to recommend that this model be trialled in Queensland to assist in meeting the aim of increasing offenders' successful completion of parole and reintegration and enhancing community safety.

Part 5 – What is the legislative framework for parole in Queensland?

45-47. Court ordered parole has the advantage of providing certainty to offenders, victims and others in relation to duration of sentence and time of release. On the other hand, it may remove the incentive for some offenders to undertake rehabilitation and other programmes in prison in preparation for their release, an incentive that exists for those prisoners who must apply to the Board for parole. There is also the question of whether courts may have been encouraged to rely on court-ordered parole unnecessarily in many cases, as the decline in use of suspended sentences could possibly indicate. The high completion rate for court ordered

parolees in 2015-2016 (almost 75%) could point to the effectiveness of supervision or that supervision was unnecessary in all or many of these cases. More needs to be known about the types of offences and offenders who are subject to court-ordered parole. That they tend to be on shorter sentences (2/3 being 12 months or less) may suggest that other less costly and less interventionist alternatives might be appropriate for many of these offenders (such as COSA). This would relieve the burden on the parole system. There is also the concern that the high numbers of court-ordered parolees who have their parole suspended due to an assessment that they present an unacceptable risk of re-offending may stem from the increased surveillance to which they are necessarily subject on parole and a blunt, process-driven approach to risk management. High levels of suspension also undercuts the claimed advantage that court-ordered parole offers certainty in relation to release date. 'Unacceptable risk' should be assessed not only by the presence of some discrete risk factor taken in isolation, like loss of a job or housing (which moreover may be no fault of the parolee). That the offence profiles of offenders on court-ordered parole are generally at the less serious end of the spectrum means that risk assessments that may result in the suspension of parole and return to prison should take into account the actual type and scale of risk involved. If for example a court-ordered parolee is at increased risk of reoffending due to loss of accommodation, it still needs to be asked what the substantive risk is: not only, whether they might commit another offence, but, in light of their prior record, what type of offence and how serious might it be. Predicting future offending is a notoriously inexact process and there is a marked tendency to err on the side of caution and thereby produce a high number of false positives. There is serious unfairness to the individual where court-ordered parole is suspended on the basis of an all-too-fallible risk assessment without any requirement for a breach of the parole conditions. The management of many of those offenders on court-ordered parole may therefore be a further dimension of unnecessary and costly churning of offenders through the system to the detriment of an approach that ensures resources are more sharply focussed on areas of high need and risk.

48. There may be some virtue in laying down general legislative principles to guide courts in relation to the imposition of probation, suspended sentences and court-ordered parole, but such decisions require broad judicial discretion to consider the particular circumstances of individual cases.

49. Any offender facing the prospect of a prison sentence should be subject to a pre-sentence report. This may include but should not be limited to a risk assessment.

50-52. See above comments under Discussion points 45-47.

53. The critical thing is that parole suspensions are subject to rigorous independent review whether this is undertaken by the Board or some other body. This is especially important if suspensions are going to be permitted on the basis of risk assessments rather than proven breaches of parole conditions.

54. If parole is suspended a logical consequence is that the parolee return to custody, otherwise they will be in a sort of limbo, neither in custody nor under supervision. The alternative is to require QCS to apply to have parole cancelled to the Board or some other body where it is necessary to make the case before a parolee is returned to custody. The latter

would be unsatisfactory where serious breaches and risks were involved and immediate action is required. A two-tier system might be possible. Fairness, expedition and effective management of risk need to be balanced in whatever arrangements are established, and indeed the three are closely entwined. Parolees are entitled to know what is expected of them and what conduct on their part will lead to suspension and return to custody. This is a matter of fairness, but it is also integral to effective risk management because uncertainty and changes in status (being churned in and out of custody) are themselves major risk factors in the lives of parolees, especially if it appears to them that they are, or may be, returned to custody on the basis of a subjective judgment and through no fault of their own. Fairness requires appropriate deliberation but also an expeditious process given the uncertainty factor and that questions of personal liberty are at stake.

Serious Violent Offenders

See the general comments and references under Discussion Points 28-30 and 44 above. The issues raised in respect of serious violent offenders and current provisions relating to them demonstrate the contradictions that currently plague risk thinking in corrections. Community safety is invoked to justify long sentences and long non-parole periods. The effect however may be to simply neutralize the risk presented by such offenders in the short term while exacerbating them in the long term. After a lengthy period in custody (usually in maximum security) an offender will be released with limited (and in cases where they have been denied parole, no) provision for supervision in the community to support and monitor what for most prisoners is a difficult, even traumatic, period of transition and adjustment given the effects of long term incarceration (Cohen and Taylor, 1972). This could hardly be said to serve the interests of community safety.

55-58. It follows that the answer to these questions is a definite 'yes', although in the case of 57 while a minimum parole period is appropriate it should (unlike the current 80% or 15-year rule) facilitate a longer period of supervision in the community.

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